

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Cleco Power LLC

Docket No. ER03-1386-000

ORDER ACCEPTING TARIFF FILING SUBJECT TO MODIFICATIONS

(Issued November 18, 2003)

1. This order accepts, subject to modifications, a filing by Cleco Power LLC (Cleco) to collect charges for unauthorized use of transmission and other services. The order benefits customers because it provides for enhanced operation and provision of electric transmission service.

Background

2. On September 25, 2003, Cleco, a public utility, filed an amendment under section 205 of the Federal Power Act to its Open Access Transmission Tariff (OATT) to collect charges for unauthorized use of firm point-to-point transmission service, non-firm point-to-point transmission service, ancillary services, and losses. Cleco requests waiver of the 60-day notice requirement to permit an effective date of October 1, 2003.

3. Cleco proposes to charge a total of 200 percent of the standard rate for unauthorized use of transmission services. The charge is applied to the highest hourly amount of capacity used at a point of receipt or point of delivery where reserved capacity is exceeded and will be charged for the shorter of the period for which service was reserved or one month. Cleco proposes that customers who take unauthorized point-to-point transmission service will pay for losses associated with the unscheduled transmission service at a rate of 200 percent of the applicable energy and capacity loss rates.

4. Where the amount of ancillary service is exceeded, Cleco proposes to charge a total of 200 percent of the higher of (1) the maximum applicable tariff ancillary service charge or (2) the out-of-pocket costs it incurs to provide the unscheduled service. Cleco supports its ancillary service penalty charges by stating that it believes that in certain situations in which it may be required to purchase capacity and energy to meet unauthorized use of ancillary services, the out-of-pocket costs could exceed 200 percent of its standard tariff.

5. Cleco states that its proposals are consistent with penalty charges accepted by the Commission in Allegheny Power System, Inc., 80 FERC ¶ 61,143 at 61,545-46 (1997),

order on reh'g, 85 FERC ¶ 61,235 (1998) (Allegheny), and Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,282 (2003) (MISO).

Notice of Filing

6. Notice of the filing was published in the Federal Register, 68 Fed. Reg. 57,889 (October 7, 2003), with comments, protests, and motions to intervene due on or before October 16, 2003. The Louisiana Energy and Power Authority filed a motion to intervene. Lafayette Utilities System (Lafayette) filed a motion to intervene and protest. Reliant Resources, Inc. (Reliant) filed a motion to intervene and comments supporting the comments made by Duke. On October 20, 2003, Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (Duke) filed a late motion to intervene and protest. On October 31, 2003, Calpine Corporation (Calpine) filed a late motion to intervene and a protest. Also on October 31, 2003, Cleco filed its opposition to Duke's late intervention and protest and an Answer to the protests of Duke and LUS.

7. Lafayette protests applying penalty charges to control areas. Lafayette also states that it should not be subject to penalty charges for transmission service that it takes from Cleco when curtailments on Cleco cause Lafayette to overrun its reserved capacity. Duke and Calpine object that the proposed penalty applies to total customer usage, not just unauthorized usage¹ and that such penalties are excessive. In addition, Duke and Calpine protest that Cleco is proposing in Section 3 to charge for the unauthorized use of ancillary service for the duration of the transmission service² and should be directed, instead, to

¹ Cleco's proposed Section 13.7 provides in part that if a transmission customer exceeds its firm reserved capacity at any point, it will "pay a penalty charge, instead of the charge for the reserved capacity provided in this Tariff, for the same duration as the Transmission customer's service reservation or for one month, whichever is shorter, for the highest hourly amount of capacity actually used at the specific Point . . . where the reserved capacity was exceeded." Where a single reservation consists of multiple increments of service of varying amounts, the penalty "shall be based upon the higher of the maximum amount reserved in a specific increment or the highest hourly amount of capacity actually used during such specific increment" Proposed Section 14.5 is similar.

² Proposed Section 3 provides in part: "In the event a Transmission Customer . . . makes an unauthorized use of Ancillary Services in excess of the amount of such service associated with reserved Point-to-Point transmission service . . . the Transmission Customer shall pay a penalty charge, instead of the charges of Ancillary Services provided in this Tariff, for the same duration as the Transmission Customer's use of transmission delivery service"

apply ancillary service penalties for the lesser of the duration of the transaction or one month, in keeping with other penalty charges. In addition, Calpine asks the Commission to require Cleco to clarify how it has calculated overuse amounts in the past and how it would calculate them in the future.

8. In its Answer Cleco asserts that its proposal to apply the penalty charge to the full amount of service and not just the unauthorized use is consistent with Commission policy. It also asserts that its penalty charges for unauthorized use of ancillary services are, in fact, limited to one month by the practical effect of billing on a monthly basis. Cleco states that each month in which unscheduled ancillary services are taken, it will charge penalties for the services taken in the preceding month and that there is no charge that extends beyond one month.

9. In answer to Lafayette, Cleco asserts that its proposed penalty charges do not affect Lafayette as a control area because they do not apply to energy that inadvertently crosses control area boundaries. It states that inadvertent deliveries of energy across control area boundaries are controlled by fixed interchange schedules, and not by point-to-point transmission reservations, and that inadvertent interchange occurs only between a control area and the interconnection, not between control areas. Cleco also asserts that, as a transmission customer, Lafayette should be subject to penalty charges for unauthorized use of Cleco's transmission service regardless of whether it receives refunds for curtailments as the two are unrelated.

10. Cleco also responds that its proposed effective date of October 1, 2003 will not penalize customers retroactively. Cleco states that only service taken on or after October 1, 2003 would be subject to the penalty charges and penalties for conduct prior to the filing are not at issue. If the Commission denies waiver of notice, Cleco requests an effective date of December 1, 2003 to coincide with its monthly billing cycle.

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2003), we will grant Calpine's late-filed motion to intervene given the early stage of the proceeding, the absence of undue prejudice or delay, and its interest in the proceeding. With respect to Cleco's opposition to Duke's late intervention, we find that Duke has a sufficient interest to warrant party status. Further, given the early stage of this proceeding and the lack of undue prejudice or delay, we will grant Duke's late-filed motion to intervene. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Cleco's Answer because it has provided information that assisted us in our decision-making process.

Discussion

12. Our review of Cleco's proposed tariff sheets, as modified below, indicates that they appear to be just and reasonable, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept for filing the proposed tariff sheets, as modified below.

13. Cleco is correct that the Commission has accepted 200 percent of the standard rate as a reasonable charge when customers make unauthorized use of a transmission system.³ However, the Commission has not accepted penalty charges consisting of actual charges, as Cleco proposes for unauthorized use of ancillary services. The Commission rejects this aspect of Cleco's proposal. Cleco has cost-based rates on file for ancillary services. These rates are intended to compensate Cleco for its costs of providing ancillary services. Cleco has not provided sufficient evidence to support the claim that a 200 percent charge based on the maximum applicable tariff ancillary service charge will not allow it to recover its costs. Therefore, consistent with Commission precedent, the Commission accepts Cleco's proposal to charge 200 percent of the maximum applicable tariff ancillary service charge, but rejects Cleco's proposal to charge 200 percent of the out-of-pocket costs it incurs to provide the unscheduled service.

14. Similarly, the Commission will require Cleco to clarify that its penalty charges will only be imposed on capacity usage in excess of reserved capacity. Contrary to Cleco's assertions, it is the Commission's policy that only unauthorized usage is subject to the penalty charge.⁴ However, under Cleco's proposal, the amount of the penalty charge is not limited to the duration of the unauthorized usage. The Commission has also determined that for usage in excess of reserved capacity, the penalty charge is to be based on the standard rate at which the service is reserved. Thus, if the overuse occurs for one hour, but the service overused is a weekly service, the penalty charge for the

³ Allegheny, 80 FERC at 61,545-46 and see discussion in MISO, 103 FERC at P 23-26 (300 percent of standard rate as penalty charge found not supported).

⁴ See, e.g., MISO, 103 FERC at P 23 n.11 (“[u]nauthorized use of transmission service obviously excludes transmission service that has been reserved . . .”). Moreover, in Allegheny, 80 FERC at 61,546 n. 131, the Commission addressed the rate that should be used as the basis for the penalty, stating that “the standard rate to be used as the basis of the penalty charge must be that of the service at issue, without regard to the duration of the violation.” The Commission concluded that this would provide an appropriate incentive to customers to make accurate reservations. It did not conclude that this penalty charge should be applied to the full amount of service.

unauthorized usage is capped at twice the standard weekly rate. Cleco's tariff must be revised to state both that only unauthorized usage is subject to penalty charges and that the penalty charge will be based on the period for which the service is reserved, or one month, whichever is less. The Commission finds this specification is necessary in Cleco's tariff and that it is not sufficient to rely on the fact that the billing process is a monthly process. There may be billing errors or other occasions on which bills are presented for more than one month.

15. Duke also objects that Cleco's proposed Section 15.7 regarding losses does not clearly limit the 200 percent penalty charge to losses associated with unauthorized usage. However, Section 15.7 states that losses will be settled at 200 percent of the applicable energy and capacity loss rates for amounts of point-to-point transmission service "exceeding reserved capacity." Thus, the Commission finds that this section is sufficiently clear that it applies a penalty charge for losses only when point-to-point transmission service is unauthorized.

16. Lafayette argues that the proposed penalty charges should not be applied to control areas while Cleco states that they do not, in fact, apply to control areas. The Commission agrees that control areas must settle energy imbalances on a regular basis to preserve the integrity of the transmission system. The settling of imbalances takes place on an in-kind basis and should remain that way to promote efficient and reliable use of the system. For Lafayette as a control area, the settlement of imbalances with other control areas takes place according to NERC and SPP criteria. We note that Cleco's existing tariff contains a mechanism to settle imbalances with control areas and the instant filing does not change that mechanism.

17. The Commission agrees with Cleco that, as a transmission customer, Lafayette is subject to penalty charges for unauthorized use of transmission and ancillary services, regardless of whether it has incurred these charges during a curtailment of its transmission service for which it has not received refunds. The Commission has not required the industry as a whole⁵ or Cleco as an individual utility to give demand charge credits for curtailments or interruptions.

18. The Commission has previously considered the disposition of penalty revenues received by a utility. The Commission has determined that the "penalty charge" for unauthorized use is actually the standard rate that would otherwise apply if sufficient

⁵ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,276 (1997).

capacity had been reserved, plus a penalty of 100 percent of the standard rate to discourage unauthorized use of the transmission service.⁶ The Commission has also determined that penalty revenues must be credited to non-offending customers.⁷ Cleco must revise its tariff so that the penalty of 100 percent of the standard rate is credited to non-offending customers.

19. Last, the Commission denies Cleco's request to waive the 60-day notice period. Cleco's proposal is a rate increase and Cleco has failed to make a strong showing of good cause to grant its waiver request.⁸ Moreover, the penalty amounts Cleco is proposing are intended to deter unwanted behavior on its system, but they cannot prevent behavior that has already occurred. Therefore, the Commission accepts Cleco's proposed penalty charges to be effective, as requested in the alternative, on December 1, 2003.

The Commission orders:

(A) Cleco's proposed tariff sheets are hereby accepted subject to the modifications in this order to become effective December 1, 2003.

(B) Cleco is hereby directed to file revised tariff sheets to comply with the modifications required in this order within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ MISO, 103 FERC at P 23 (2003).

⁷ Carolina Power & Light and Florida Power Corp., 97 FERC ¶ 61,048 at 61,279 (2001).

⁸ See Central Hudson Gas & Electric Corp., et al., 60 FERC ¶ 61,106 at 61,339, reh'g denied, 61 FERC ¶ 61,089 (1992).

APPENDIX

Tariff Sheets Submitted in Docket No. ER03-1386-000
Accepted to be effective December 1, 2003 with modifications

First Revised Sheet No. 14
Original Sheet No. 14A
First Revised Sheet No. 22
Original Sheet No. 22A
First Revised Sheet No. 24
Original Sheet No. 24A
First Revised Sheet No. 26
Original Sheet No. 26A